

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

FILE COPY

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
:
PRASSER-KLECZKA FUNERAL :
HOME, INC., :
MICHAEL G. SMUKOWSKI, :
RESPONDENTS. :

FINAL DECISION AND ORDER

91 FDR 026

The parties to this proceeding for the purpose of sec. 227.53 are:

Prasser-Kleczka Funeral Home, Inc.
3275 South Howell Avenue
Milwaukee, WI 53207

Michael G. Smukowski
1220 East Brady Street
Milwaukee, WI 53202

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

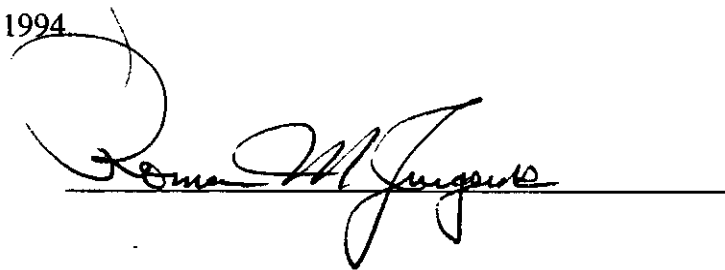
The State of Wisconsin, Funeral Directors Examining Board, having considered the Stipulation agreement annexed hereto, of the parties, in resolution of the captioned-matter, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered pursuant to jurisdiction and authority granted to the Board in secs. 445.13, Wis. Stats., and RL 2.12, Wis. Adm. Code, that the Stipulation agreement annexed hereto, filed by Complainant's Attorney, shall be and hereby is incorporated, made and ordered the Final Decision and Order of the State of Wisconsin, Funeral Directors Examining Board.

Let a copy of this order be served on Respondents by certified mail.

Dated this 12th day of July, 1994



HES:lmf
ATY-BLG726

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: STIPULATION
PRASSER-KLECZKA FUNERAL :
HOME, INC., : 91 FDR 026
MICHAEL G. SMUKOWSKI, :
RESPONDENTS. :

Respondent Prasser-Klecza Funeral Home, Inc. (Establishment), its Attorney, Mark E. Sostarich, Respondent Michael G. Smukowski, and Complainant's Attorney, Henry E. Sanders, having reached agreements for disposition of the above-captioned matter, hereby stipulate and agree as follows:

a. This agreement is dispositive of investigative complaint #91 FDR 026.

1. Respondent Smukowski, of 1220 East Brady Street, Milwaukee, Wisconsin 53202, was at all time material to the complaint, licensed as a funeral director, license #4486, and employed with Respondent funeral establishment, and has been so licensed under the provisions of Ch. 445, Wis. Stats., since June 30, 1977.

2. Respondent Prasser-Klecza Funeral Establishment of 3275 South Howell Avenue, Milwaukee, Wisconsin 53207, is and was at all time material to the complaint, licensed as a funeral establishment, license #0996, and has been so licensed under the provisions of Ch. 445, Wis. Stats., since September 16, 1954.

3. This Stipulation shall be submitted to the Funeral Directors Examining Board (Board) for approval and disposition of the matter. If the terms of this Stipulation are not acceptable to the Board, then the parties shall not be bound by any of the provisions of this Stipulation.

4. Respondents have been advised of their rights to public hearings on each and every allegation of the complaint, but hereby freely and voluntarily waive their rights to a public hearing in this matter, on the condition that all provisions of this Stipulation be acceptable to and approved by the Board.

a. Respondents further agree to waive any appeal of the Board's Final Decision and Order adopting the Stipulation agreement.

5. On August 25, 1989, Mr. Peter Nemke (Nemke), and Mr. Charles Holsen, Sr. (Holsen), both died separately from cancer related illnesses, and Respondent funeral establishment

received calls regarding each death within a short time of each other.

6. Respondent Smukowski and another employee removed Mr. Holsen's body from his residence, and both also were the embalmers for his remains.

7. Two other funeral establishment's employees removed Mr. Nemke's body from the nursing home in which he had died, and Respondent Smukowski and another employee were the embalmers of Mr. Nemke's remains.

a. At the time of the preparations of the bodies of Mr. Holsen and Mr. Nemke, their's were the only remains of males approximately the same age group for whose families Respondent funeral establishment was making arrangements and providing services.

8. The wake for Mr. Nemke was scheduled for August 28, 1989, with his funeral services and entombment scheduled for August 29, 1989.

9. The wake and funeral services for Mr. Holsen were scheduled for the evening of August 29, 1989 with his interment scheduled for August 30, 1989.

10. On August 28, 1989, an open casket wake took place for what then was believed to be the remains of Mr. Nemke, in which the body was on display to family members, relatives and friends of the deceased who attended.

a. None of the family members, relatives or friends of the deceased noticed that the body on display was not Mr. Nemke (hereinafter); and Respondents did not receive any complaints from anyone regarding any problems with the funeral arrangement, wake service, preparation or appearance of the body, or entombment.

11. On the following day, August 29, 1989, the wake and funeral services for Mr. Holsen were planned. Prior to the wake and services, when family members viewed the arrangements and body, the family members discovered that the body in the coffin was not their father, Mr. Holsen.

a. After discussions between Respondents and Mr. Holsen's family members, it was concluded that the only possibility could be that Mr. Holsen's body had somehow been inexplicably confused with that of Mr. Nemke; and that Mr.

Holsen's body must have been on display during Mr. Nemke's funeral the previous day.

12. Subsequently, Respondents and family members of the Holsen's family visited the cemetery where the believed body of Mr. Nemke had been placed in a crypt, opened the crypt and removed the casket and remains, and the parties ultimately determined that the remains were those of Mr. Holsen, and not of Mr. Nemke, as had been intended.

- a. Mr. Holsen's remains were immediately returned to Respondent's funeral establishment, the body was prepared and the funeral services occurred at the time as originally planned by the Holsen's family.

13. Thereafter, Respondents notified the Nemke's family of the above enumerated facts, and offered to have another graveside ceremony performed for Mr. Nemke, which was accepted by and participated in by the Nemke's family.

14. Subsequently, Mr. Jerome Kleczka, owner of Respondent's funeral establishment, on several occasions, personally met with and apologized to representatives of both families, and neither families nor estates were charged for any funeral services or arrangements, including the caskets and related items for each of the funerals by Respondents.

15. Although the Respondents neither admit nor deny the allegations enumerated supra, that in resolution of the captioned-matter, they agree not to contest (in effect enter a no contest plea) to findings of violations of sec. FDE 3.02(6), Wis. Adm. Code, providing and performing the services of funeral directing in a manner which falls below minimal standards established by statute, rule or practice in the profession.

16. Respondent funeral establishment is subject to discipline pursuant to sec. 445.105(4), Wis. Stats.

17. Based upon the above and in settlement of this matter, Respondents Prasser-Kleczka Funeral Home, Inc., and Michael G. Smukowski hereby consent, accept and agree to reprimands, with Respondent funeral establishment to pay the amount of \$500.00 to the department as part-assessment of costs in resolving this matter.

- a. The payment of the \$500.00 shall be by cashier's check or money order made payable to the Department of Regulation and Licensing, and submitted to the department at the point of execution of this Stipulation.

18. The complaint against James G. Waldhuetter (deceased), is dismissed.

19. Respondents agree that this Stipulation agreement may be incorporated into the Board's Final Decision and Order adopting the Stipulation agreement.

20. Respondents further agree that Complainant's Attorney Sanders may appear at any closed deliberative meeting of the Board with respect to this Stipulation, but that appearance is limited solely to clarification, justification, and to statements in support of the Stipulation and for no other purpose.

Prasser-Kleczka Funeral Home, Inc June 22, 1994
Prasser-Kleczka Funeral Home, Inc. Date

by: Jerome J. Kleczka its President

Mark E. Sostarich June 27, 1994
Mark E. Sostarich Date

Michael G. Smukowski Date

Henry E. Sanders 7/7/94
Henry E. Sanders Date
Complainant's Attorney

PKStip.mes
6/7/94